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No. 90-1773

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CORONATION SHIPPING COMPANY

and

THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED,
Petitioners,

v.

GLENN J. CREPPEL, JR.,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeal, Fifth Circuit, State of Louisiana

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REPLY BRIEF OF PETITIONERS IN SUPPORT OF THEIR PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIFTH CIRCUIT, STATE OF LOUISIANA

ROBERT H. MURPHY
Counsel of Record
KENNETH J. SERVAY
THOMAS D. FORBES
CHAFFE, MCCALL, PHILLIPS, TOLER & SARPY
2300 Energy Centre
1100 Poydras Street
New Orleans, LA 70163-2300
(504) 585-7000
Counsel for Petitioners

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PREFACE

Petitioners, Coronation Shipping Company and The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited,[1] advanced two main arguments in support of their petition. The Louisiana Court of Appeal violated the supremacy and uniformity of federal maritime law by (1) applying a standard of care at odds

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[1] Petitioners' Rule 29.1 statement is set forth at page ii of their petition. Petitioners have no parent companies or subsidiaries within the scope of the rule.

with the standard established as part of federal maritime law and (2) reviewing this case under a local, rather than a uniform maritime standard of review. In opposition, respondent has asserted: (a) that petitioners have "tunnel vision" and are "playing a game of semantics" in suggesting that the state appellate court applied an improper standard of care; (b) that the standard of review applied by the state appellate court is the same as the federal standard of review; and (c) that petitioners incorrectly contend that the Louisiana Supreme Court requires that state standards of review apply to federal maritime cases. None of respondents' arguments undermines the importance of the questions presented and the need to grant a writ in this case.

A. The State Appellate Court Impermissibly Substituted an Improper Strict Liability Standard of Care for the Established, Uniform Maritime *Negligence* Standard of Care

Respondent asserts that the state appellate court applied the established maritime standard of care in reversing the jury's verdict and that petitioners are "playing a game of semantics" in suggesting otherwise. Respondent's argument is refuted by the plain language of the decision below.

The trial court correctly applied the "reasonable care under the circumstances" standard adopted by this Court in *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959). Respondent does not and cannot challenge the applicability of this negligence standard, as he acquiesced in this standard before the trial court. Yet, the opinion of the state court of appeal makes no mention of *Kermarec*, nor does it attempt to apply any standard of care that in any way resembles the *Kermarec* standard. Rather, the new, *ex post facto* duty imposed on petitioners by the state court of appeal was an absolute duty to protect respondent from injury. As the court of appeal stated:

> Defendants [*i.e.*, petitioners] owed a duty to plaintiff [*i.e.*, respondent] to protect him against the injury caused by its failure to operate a safe vessel.

Petitioners' Petition for Writ of Certiorari, Appendix at 14a. Neither respondent nor the state court of appeal explains how this standard comports with *Kermarec*.

The decision of the Louisiana Court of Appeal speaks for itself. The standard of care applied by that court plainly deviates from the constitutionally supreme and uniform maritime standard announced by this Court in *Kermarec*. The state appellate court's decision ignores the supremacy of federal maritime law and destroys its uniformity—by authorizing the imposition of nonmaritime duties on a case-by-case basis. Petitioners submit that this important issue clearly merits the grant of a writ.

B. The Louisiana Court of Appeal Violated the Uniformity and Supremacy of Federal Maritime Law by Reviewing the Jury's Verdict Under Nonuniform, Louisiana Standards of Appellate Review

Respondent submits that the state appellate court committed no error in applying the Louisiana "manifest error" standard of appellate review, because this standard is the same as the federal "clearly erroneous" standard routinely applied in reviewing federal maritime cases. Respondent's suggestion is belied by the court of appeal's decision, as well as by Louisiana Supreme Court jurisprudence.

First, the opinion below plainly indicates the difference between Louisiana principles of appellate review and federal review standards customarily applied in maritime cases. In applying the Louisiana "manifest error" standard to reverse the jury's verdict, the court below reweighed *conflicting* evidence and refound the facts. Petitioner's Petition, Appendix, 1a-14a. Under maritime principles of appellate review, appellate courts are prohibited

from reweighing conflicting evidence and refinding the facts. *Eg., Pullman-Standard v. Swint*, 456 U.S. 273, 291-92 (1982); *McAllister v. United States*, 348 U.S. 19, 20, 22 (1954) and cases cited in Petitioners' Petition, 18-19.

Second, the Louisiana Supreme Court jurisprudence expressly acknowledges the difference between the "manifest error" standard and customary maritime standards of review. In *Arceneaux v. Domingue*, 365 So.2d 1330, 1333 (La. 1978), the Louisiana Supreme Court explained that a fact finding can be reversed as "manifestly erroneous" even though the evidence before the trier of fact provides a reasonable basis for its finding. Furthermore, that court recognized that the Louisiana Constitution of 1974, Article 5, Section 10(B) and (C) (*quoted* in Petitioner's Petition, 4-5), grants Louisiana appellate courts "full and complete jurisdiction to review the facts." *Arceneaux*, 365 So.2d at 1333. Uniform maritime principles of review prohibit the appellate court from disturbing a jury verdict or fact findings that have a reasonable basis in the record. *See McAllister v. United States*, 348 U.S. 19, 20 (1954) and discussion in Petitioners' Petition, 18-20.

The jury verdict in favor of petitioners was supported by substantial evidence and could not have been reversed under any federal standard of review. The Louisiana court's application of a nonuniform, nonmaritime standard of review impermissibly made the substantive rights of the parties depend on the courthouse where the action was filed. *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 409-10 (1953). The decision below undermines the constitutionally mandated uniformity and supremacy of federal maritime law and presents an important question that should be reviewed by this Court.

C. The Louisiana Court of Appeal's Failure to Apply Maritime Standards of Review Is in Accordance with Louisiana Supreme Court Jurisprudence

Respondent suggests that *Daigle v. Coastal Marine, Inc.*, 488 So.2d 679 (La. 1986), does not hold, as contended by petitioners (*see* Petitioner's Petition, 19-20 and footnotes 8 and 9), that Louisiana appellate courts must apply nonmaritime principles of review to maritime cases. Respondent asserts that *Daigle* is a nonmaritime case to which the Louisiana Supreme Court correctly applied a state standard of review.

Initially, respondent's argument is irrelevant. Regardless of whether *Daigle* was a maritime case and whether the Louisiana Supreme Court correctly or incorrectly applied a state review standard *in that case*, the court below improperly applied nonmaritime review principles *to this maritime case.*

In any event, respondent, and not petitioners, mischaracterizes *Daigle.* In that case, plaintiff, a passenger on a vessel moored in the Gulf of Mexico, was injured when he slipped *on the vessel's staircase* while disembarking the vessel. 488 So.2d at 680. As the *Daigle* plaintiff's injury was sustained on a vessel in navigation on the high seas, that tort action clearly was governed by maritime law. *See Kermarec, supra.* At the very least, *Daigle* strongly implies, if it does not outright hold, that Louisiana requires nonmaritime, Louisiana principles of review to be applied to non-Jones Act maritime cases decided in Louisiana state courts.

Consistent with the Louisiana Supreme Court's mandate in *Daigle*, the Louisiana Court of Appeal was required to incorrectly apply a nonmaritime standard of appellate review in this case, in violation of the constitutional supremacy and uniformity of federal maritime law. This Court should grant a writ to address this important issue.

CONCLUSION

This case implicates the supremacy and uniformity of maritime law. To the substantial prejudice of substantive maritime rights, Louisiana courts have refused to apply uniform maritime standards of care and principles of appellate review. The significance of the questions presented and the international concerns that they affect merit the granting of a writ of certiorari. Petitioners submit that this Court should grant a writ to fully consider both questions.

Respectfully submitted,

ROBERT H. MURPHY
Counsel of Record
KENNETH J. SERVAY
THOMAS D. FORBES
CHAFFE, MCCALL, PHILLIPS,
TOLER & SARPY
2300 Energy Centre
1100 Poydras Street
New Orleans, LA 70163-2300
(504) 585-7000
Counsel for Petitioners

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